

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**SMITH & NEPHEW, INC. and JOHN O.
HAYHURST, M.D.,**

Plaintiff,

v.

ARTHREX, INC.,

Defendant.

No. 3:04-cv-00029-MO
AMENDED ORDER OF PERMANENT INJUNCTION

PATENT CASE

MOSMAN, J.,

IT IS HEREBY ORDERED that, effective 14 days after the date of this Order, the defendant, Arthrex, Inc., its subsidiaries and related companies, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any or all of them who receive actual notice of this Order, are hereby permanently enjoined from inducing the infringement of, and/or contributing to the infringement of Claims 1, 2, 3, 4, 5, 6 and/or 7 of U.S. Patent No. 5,601,557 (“the ‘557 patent”) by end users in the United States and its territories, until the expiration of the patent, or the cancellation of or final ruling of invalidity, after exhaustion of

all possible appeals, of all claims of the patent, by using, importing, selling, and/or offering to sell in the United States and its territories any of the following products for use in the United States and its territories:

- (i) Bio-SutureTak suture anchors of all sizes, including the Bio-SutureTak, 2.4 mm Bio-SutureTak, 3.7 mm Bio-SutureTak, Mini Bio-SutureTak, and Micro Bio-SutureTak;
- (ii) PEEK SutureTak suture anchors;
- (iii) 3.5 mm Bio-PushLock suture anchors, except those which are excluded as being of the “large eyelet” variety as set forth below;
- (iv) 3.5 mm PEEK PushLock suture anchors, except those which are excluded as being of the “large eyelet” variety as set forth below; and
- (v) any suture anchors not more than colorably different from said infringing suture anchors listed in (i), (ii), (iii) and/or (iv) above.

No other anchors are included in this Order and the following suture anchors are not included in the above list:

- (i) Bio-Composite SutureTak;
- (ii) All Pushlock suture anchors in sizes other than 3.5 mm; and
- (iii) 3.5 mm “large eyelet” Bio-PushLock and PEEK PushLock suture anchors, which include an eyelet member having a diameter of at least 2.4 mm.

IT IS FURTHER ORDERED that, effective 14 days after the date of this Order, the defendant, Arthrex, Inc., shall either (1) remove all advertising material for the infringing suture anchors listed in (i), (ii), (iii) and (iv) above from its website, or (2) post a disclaimer on its website stating that any use of the infringing suture anchors listed in (i)-(iv) above must not

occur in the United States until the expiration of the '557 patent pursuant to an injunction entered against Arthrex.

IT IS FURTHER ORDERED that, effective 30 days after the date of this Order, the defendant, Arthrex, Inc., its subsidiaries and related companies, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any or all of them who receive actual notice of this Order, recall all infringing suture anchors listed in (i), (ii), (iii) and (iv) above that Arthrex has distributed in any way and for which Arthrex has not yet sent an invoice, unless such anchors have already been used in surgery. Arthrex may use the recalled anchors in any way that does not violate this injunction.

IT IS FURTHER ORDERED that the defendant, Arthrex, Inc. promptly provide a copy of this Order to each of its distributors and sales representatives, who are or have been involved in the sale of Arthrex suture anchors, whether or not such persons are employees of Arthrex, Inc.

DATED this 18th day of September, 2013.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court